

1 Paul A. Levin (State Bar No. 229077)
plevin@themrlg.com
2 MORTGAGE RECOVERY LAW GROUP, LLP
550 North Brand Boulevard, Suite 1100
3 Glendale, California 91203
Telephone: (818) 630-7900 / Fax: (818) 630-7920

4 Etan Mark (admitted *pro hac*)
etan@markmigdal.com
5 Donald J. Hayden (admitted *pro hac*)
don@markmigdal.com
6 MARK MIGDAL & HAYDEN
7 80 SW 8th Street, Suite 1999
Miami, Florida 33130
8 Telephone: (305) 374-0440

9 Attorneys for Plaintiffs

10 Mark T. Dooks – State Bar No. 123561
mdooks@birdmarella.com
11 Paul S. Chan – State Bar No. 183406
pchan@birdmarella.com
12 Gopi K. Panchapakesan – State Bar No. 279586
gkp@birdmarella.com
13 Jonathan M. Jackson – State Bar No. 257554
jjackson@birdmarella.com
14 BIRD, MARELLA, BOXER, WOLPERT, NESSIM,
DROOKS, LINCENBERG & RHOW, P.C.
15 1875 Century Park East, 23rd Floor
Los Angeles, California 90067-2561
16 Telephone: (310) 201-2100
Facsimile: (310) 201-2110

17 Attorneys for Defendant Herbalife
18 International of America, Inc.

19
20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
22

23 MICHAEL LAVIGNE, *et al.*,
24 Plaintiffs,
25 vs.
26 HERBALIFE LTD., *et al.*,
27 Defendants.
28

CASE NO. 2:18-cv-07480-JAK (MRWx)
[Related Case 2:13-cv-02488-BRO-RZ]
STIPULATION OF SETTLEMENT
Assigned to Hon. John A. Kronstadt,
Courtroom 10B

1 This Stipulation of Settlement and attached exhibits (the “Settlement
2 Agreement” or “Settlement”) dated as of May 27, 2022, is made by and among the
3 following Settling Parties (as defined below): on the one hand, Plaintiffs Patricia
4 Rodgers, Jennifer Ribalta, and Izaar Valdez on behalf of themselves, and on behalf of
5 each of the Settlement Class Members (as defined herein), by and through Plaintiffs’
6 Counsel; and on the other, Defendant Herbalife International of America, Inc.
7 (“Herbalife”), by and through its counsel. This Settlement Agreement is intended by
8 the Settling Parties to resolve, discharge, and settle the Released Claims (as defined
9 herein), upon and subject to the terms and conditions of this Settlement Agreement.

10 **1. DEFINITIONS**

11 In addition to the foregoing defined terms, the following terms shall have the
12 meanings as set forth below:

13 1.1 “Action” means the action filed in the United States District Court for
14 the Central District of California entitled *Lavigne, et al. v. Herbalife Ltd., et al.*, Case
15 No. 2:18-cv-07480-JAK (MRWx), including all pleadings on file in that action.

16 1.2 “Authorized Claimant” means a Settlement Class Member who submits
17 a timely and valid Claim Form to the Claims Administrator or is otherwise authorized
18 to receive benefits under this Settlement Agreement.

19 1.3 “Claims Administrator” means A.B. Data, who shall be subject to and
20 comply with this Settlement Agreement.

21 1.4 “Plaintiffs’ Counsel” means the law firms Mark Migdal & Hayden and
22 Mortgage Recovery Law Group, LLP.

23 1.5 “Class Period” means the period beginning January 1, 2009, through and
24 including the date the Preliminary Approval Order is entered.

25 1.6 “Court” means the United States District Court for the Central District
26 of California.

27 1.7 “Effective Date” means the first date after which all of the following
28 events and conditions have been met or have occurred:

1 1.7.1 The Settlement Agreement is executed and delivered by/to all
2 Parties and approved by the Court;

3 1.7.2 Entry of the Final Judgment and Order Approving Settlement
4 (“Final Judgment”);

5 1.7.3 The Final Judgment becomes “Final.” “Final” means the
6 occurrence of any of the following: (a) final affirmance on an appeal of the Final
7 Judgment, the expiration of the time for a petition for review of the Final Judgment,
8 and, if the petition is granted, final affirmance of the Final Judgment following review
9 pursuant to that grant; (b) final dismissal of any appeal from the Final Judgment or
10 the final dismissal of any proceeding to review the Final Judgment; or (c) if no appeal
11 is filed, the expiration of the time for the filing or noticing of any appeal from the
12 Court’s Final Judgment. If the Final Judgment is set aside, materially modified,
13 vacated, or reversed by the Court or by an appellate court, and is not fully reinstated
14 on further appeal, then the Final Judgment does not become “Final” and the Effective
15 Date cannot occur.

16 1.7.4 Plaintiffs and Herbalife shall have the option to elect to waive the
17 failure, in whole or in part, of any of the conditions set forth in Subsections 1.7.1-
18 1.7.3. If Plaintiffs or Herbalife elect to waive the failure, in whole or in part, of such
19 condition, Plaintiffs or Herbalife shall file a written notice of waiver with the Court
20 within ten (10) days after they become aware of the failure of such condition. If
21 Plaintiffs and Herbalife both waive the failure, in whole or in part, of any condition
22 in Subsections 1.7.1-1.7.3, then the Effective Date will occur without satisfaction of
23 that condition.

24 1.8 “Escrow Agent” means A.B. Data.

25 1.9 “Herbalife Corporate Event” means any U.S.-based Herbalife Event with
26 respect to which Herbalife directly sells tickets.

27 1.10 “Herbalife Event” means any U.S.-based Herbalife Event (inclusive of
28 Herbalife Corporate Events) including: Extravaganza, Leadership Development

Weekend (LDW), Future President’s Team Retreat, Kickoff, Spectacular(s), January Kickoff (JKO), January Spectacular, Herbalife Honors, African American Recruiting Tour, Herbalife Summit, Building Your Business Workshop, Future Millionaire Team Event (FMTE), RSM LA Experience, Galaxy Rally, Success Training Seminar (STS), Herbalife Opportunity Meeting (HOM), Scale to Success, and any Latin market equivalent of these events, including, but not limited to, FSL, Fin de Semana de Liderazgo, Mega Escuela, Latin Recruit Tours, Latin Market Extravaganza, Latin Market LDW, and Latin Market Future President’s Team Retreat.

1.11 “Named Plaintiffs” refers to Patricia Rodgers, Jennifer Ribalta, and Izaar Valdez.

1.12 “Notice” means the notice provided for in Section 6 and substantially in the form attached hereto as Exhibit A.

1.13 “Person” means an Herbalife member or distributor in his or her individual capacity; any corporation, limited liability company, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, or any business or legal entity through which he or she has conducted or conducts an Herbalife distributorship; and their spouses, heirs, predecessors, successors, representatives, alter egos, or assigns.

1.14 “Preliminary Approval Order” means the order to be entered by the Court preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes only, approving the Notice of Proposed Settlement, approving the Summary Notice, and setting the Settlement Hearing, as provided for in Section 6.

1.15 “Settlement Agreement” means this Stipulation of Settlement, including all attached exhibits.

1.16 “Settlement Class” means all U.S. Herbalife distributors who purchased tickets to at least two Herbalife Events during the Class Period.

1.16.1 Excluded from the Settlement Class are past and present

1 members of Herbalife's President's Team or above (including past and present
2 members of Herbalife's Chairman's Club and Founder's Circle) to the extent those
3 individuals were members of Herbalife's President's Team or above throughout the
4 Class Period, including their spouses, heirs, predecessors, successors, representatives,
5 alter egos, or assigns. Also excluded are any U.S. Herbalife distributors who have
6 previously executed a release of the claims that are the subject matter of this litigation.

7 1.17 "Settlement Class Member" means a Person who fits within the
8 definition of the Settlement Class and who has not validly and timely requested
9 exclusion from the Settlement Class, as provided in Section 9.

10 1.18 "Settlement Hearing" means the hearing to determine whether this
11 Settlement Agreement should be finally approved by the Court, as provided for in
12 Section 6.

13 1.19 "Settling Parties" means Herbalife and each of the Plaintiffs on behalf of
14 themselves and each of the Settlement Class Members.

15 1.20 "Summary Notice" means the written notice provided for in Section 6
16 and substantially in the form attached hereto as Exhibit B.

17 1.21 The word "or" means and/or.

18 1.22 The plural includes the singular and vice-versa.

19 **2. LITIGATION BACKGROUND**

20 2.1 Original Complaint. On September 18, 2017, Plaintiffs Jeff Rodgers,
21 Patricia Rodgers, Michael Lavigne, Jennifer Lavigne, Cody Pyle, Jennifer Ribalta,
22 Izaar Valdez, and Felix Valdez, on behalf of themselves and a putative class of "others
23 similarly situated," filed this Action in the United States District Court for the
24 Southern District of Florida, naming as defendants Herbalife International of
25 America, Inc.; Herbalife International, Inc.; and Herbalife Nutrition Ltd., as well as
26 several individual Herbalife distributors, alleging the following claims for relief:
27 (1) violations of the federal Racketeer Influenced Corrupt Organizations Act (18
28 U.S.C. §§ 1962 (c) and (d)); (2) violations of Florida's Deceptive and Unfair Trade

1 Practices Act (FDUTPA) (Fla. Stat. §§ 501.201 – 501.213); (3) a common law claim
2 for unjust enrichment; and (4) a common law claim for negligent misrepresentation.
3 Dkt. 1. The complaint sought, among other things, damages for the financial losses
4 incurred by Plaintiffs and the class; general, compensatory, and exemplary damages;
5 temporary and permanent injunctive relief; costs; reasonable attorneys' fees; pre- and
6 post-judgment interest; and other relief the Court may deem just and proper.

7 2.2 Transfer to this Court. Pursuant to an order issued by the United States
8 District Court for the Southern District of Florida, the claims of Jeff Rodgers, Patricia
9 Rodgers, Jennifer Ribalta, and Izaar Valdez against Herbalife were transferred to this
10 Court on August 23, 2018. Dkt. 106. The other four Plaintiffs' claims against
11 Herbalife were compelled to arbitration. *Id.* Jeff Rodgers subsequently passed away
12 during the pendency of this case.

13 2.3 Motion to Dismiss. On September 28, 2018, Herbalife moved to dismiss
14 the Complaint. Dkt. 142. On October 22, 2019, the Court granted Herbalife's motion
15 to dismiss without prejudice. Dkt. 196.

16 2.4 First Amended Complaint. On November 12, 2019, Plaintiffs filed the
17 First Amended Complaint. Dkt. 202. The First Amended Complaint omitted the
18 previously pled common law claim for unjust enrichment, and in lieu of the FDUTPA
19 claim, Plaintiffs pled a violation of California's Unfair Competition Law (Cal. Bus.
20 & Prof. Code §§ 17200 *et seq.*). It also named only Herbalife International of
21 America, Inc. as a defendant.

22 **3. BENEFITS OF THE SETTLEMENT**

23 3.1 Diligence of Counsel. Counsel for Herbalife and Plaintiffs are
24 represented by experienced counsel who have conducted extensive fact and expert
25 discovery. Plaintiffs' counsel has also conducted an investigation prior to and
26 throughout the prosecution of the Action. The discovery and investigation have
27 included: (i) review of hundreds of thousands of pages of documents and hundreds of
28 hours of Herbalife Event video footage; (ii) depositions of three Herbalife corporate

1 representatives pursuant to Federal Rule of Civil Procedure 30(b)(6), the named
2 Plaintiffs, and the parties' respective experts; (iii) depositions of, and review of
3 documents produced by, third-party Herbalife distributors and other persons with
4 relevant information; (iv) review of written discovery responses provided by the
5 parties; (v) review of publicly available documents; (vi) interviews with former
6 Herbalife members or distributors; (vii) consultation with experts; and (viii) research
7 of the applicable law with respect to the claims asserted in the complaints and the
8 potential defenses thereto.

9 3.2 Benefits to Settlement Class. Plaintiffs' Counsel have analyzed the
10 benefits to be obtained under the terms of the proposed Settlement and have
11 considered the costs, risks, potential weaknesses of the case, and delays associated
12 with the continued prosecution of the Action and likely appeals, as well as the merits
13 of the defenses asserted by Herbalife. Among other things, Herbalife presented an
14 expert survey opining that a very high percentage of Herbalife distributors polled
15 found "value" in Herbalife Event attendance, and an opinion that there is a positive,
16 statistically significant relationship between attending Herbalife Events and
17 distributor earnings. Plaintiffs presented rebuttal experts opining, among other things,
18 that there is no such correlation and that event attendance does not lead to "success"
19 in the Herbalife business opportunity. Plaintiffs' Counsel believe that, in
20 consideration of all of the circumstances and after prolonged, serious, and contentious
21 arm's-length negotiations in mediation with Herbalife, facilitated by Hon. S. James
22 Otero (Ret.), the proposed Settlement is fair, reasonable, adequate, and in the best
23 interests of the Settlement Class.

24 3.3 Benefits to Herbalife. Herbalife has concluded that it is in its best
25 interests that the Action be settled on the terms set forth in the Settlement Agreement.
26 Herbalife reached that conclusion after: (1) analyzing the factual and legal issues in
27 the Action and considering the uncertainty of litigation; (2) determining that further
28 conduct of the Action through trial and any possible appeals would be protracted and

1 expensive; and (3) considering the benefits of permitting Herbalife to conduct its
2 business unhampered by the distractions of continued litigation.

3 **NOW, THEREFORE, IT IS HEREBY AGREED** by and between the
4 parties, through their respective counsel, that the Action and the Released Claims be
5 finally and fully settled, compromised, and released, and the Action shall be dismissed
6 with prejudice, on the terms set forth herein, as between Plaintiffs and the Settlement
7 Class Members on the one hand, and Herbalife on the other.

8 **4. MONETARY RELIEF**

9 4.1 Monetary Fund. Herbalife shall establish a non-reversionary
10 “Settlement Fund” in the amount of \$12,500,000.00. This amount shall be deposited
11 into an escrow account within ten (10) business days after the Court issues the
12 Preliminary Approval Order. The Settlement Fund shall be applied: (a) first, to pay
13 the costs of notice and settlement administration; (b) second, to pay Plaintiffs’
14 Counsel’s attorneys’ fees and expenses and any plaintiff service awards in the amount
15 awarded by the Court; and (c) third, to pay Settlement Class Members who submit a
16 valid claim for a cash award (this final amount is the “Net Settlement Fund”). If there
17 are insufficient funds available to satisfy all class claims, then claims to the Settlement
18 Class Members shall be paid proportionately from the Net Settlement Fund. The Court
19 shall oversee the distribution of any amounts remaining in the Net Settlement Fund
20 pursuant to the *cy pres* doctrine to Consumer Federation of America. To the extent
21 interest is earned on amounts held in escrow, it shall accrue and be added to the
22 Settlement Fund. The Escrow Agent, on behalf of the Settlement Class, shall be
23 responsible for all administrative, accounting, and tax compliance activities in
24 connection with this escrow account and shall comply with the provisions of the
25 escrow agreement.

26 4.2 Calculation of Pro Rata Cash Awards to Settlement Class Members.

27 4.2.1 Each Settlement Class Member shall be informed by the Claims
28 Administrator as to the Herbalife Corporate Events for which that Settlement Class

1 Member purchased tickets according to Herbalife's records.

2 4.2.2 A Settlement Class Member may claim additional Herbalife
3 Events for which the Settlement Class Member purchased tickets if the Settlement
4 Class Member certifies the following as to each additional Herbalife Event:

- 5 (a) The name of the event;
6 (b) The date of the event;
7 (c) The location of the event; and
8 (d) The cost of the ticket to attend the event.

9 4.2.3 Following the claims deadline set by the Court, the Claims
10 Administrator shall calculate the Net Settlement Fund amount. The Claims
11 Administrator shall then divide the Net Settlement Fund amount by the total number
12 of Herbalife Event tickets purchased by Authorized Claimants (the "Per Event
13 Award").

14 4.2.4 Each Authorized Claimant shall be entitled to receive the Per
15 Event Award for each Herbalife Event for which that Authorized Claimant purchased
16 a ticket. Payments made to an Authorized Claimant may exceed the total amount that
17 the Authorized Claimant spent on tickets to attend Herbalife Events during the Class
18 Period, up to a total payment ceiling of 150 percent of the total amount spent on tickets
19 by an Authorized Claimant.

20 4.2.5 The total amount of payments allocated to Authorized Claimants
21 may not exceed the amount of the Net Settlement Fund. In the event that the total
22 amount of payments allocated to Authorized Claimants exceeds the amount of the Net
23 Settlement Fund, the Per Event Award shall be reduced according to the below
24 graduated scale. Under the below scale, a given Authorized Claimant's Herbalife Per
25 Event Award shall be reduced in accordance with the number of Herbalife Events for
26 which the Authorized Claimant purchased tickets.

- 27 (a) 2 to 5 Herbalife Events: Per Event Award.
28 (b) 6 to 10 Herbalife Events: 75 percent of Per Event Award for

the tickets purchased for this subset of events.

(c) 11 to 15 Herbalife Events: 50 percent of Per Event Award for the tickets purchased for this subset of events.

(d) 16-plus Herbalife Events: 25 percent of Per Event Award for the tickets purchased for this subset of events.

4.2.6 In the event that the total amount of payments allocated to Authorized Claimants exceeds the amount of the Net Settlement Fund under the above graduated scale, then cash awards shall be paid to Authorized Claimants on a pro rata basis.

4.3 Claim Forms. Claim Forms shall be available from the Claims Administrator, as set forth in the Notice to the Settlement Class. Completed Claims Forms shall be due to the Claims Administrator no later than 120 days after the entry of preliminary approval of the Settlement Agreement.

4.4 Opt-Out Request. Settlement Class Members may submit an Opt-Out request to the Claims Administrator prior to the Claims Deadline asking to be excluded from the Settlement Class. If a Settlement Class Member submits both a Claim Form and an Opt-Out request, the Claims Administrator shall disregard the Opt-Out request.

4.5 The claims process shall employ standard anti-fraud measures to be implemented by the Claims Administrator. These measures may include comparing data provided by Settlement Class Members with information otherwise available to Herbalife. If the Claims Administrator reasonably determines that it needs further information or documentation to properly process a claim, it will so notify the claimant in writing. If the claimant fails to correct any deficient conditions identified, the claim may be rejected in whole or in part by the Claims Administrator.

4.6 No Disbursement of Direct Relief Before Effective Date. The Escrow Agent and the Claims Administrator shall not disburse any portion of the Net Settlement Fund before the Effective Date, except as provided for in the Settlement

1 Agreement.

2 4.7 Privacy. The Claims Administrator shall take reasonable measures to
3 the extent permitted by law to assert and to protect the privacy rights of Settlement
4 Class Members, including by maintaining the confidentiality and security of and
5 preventing the unauthorized access or acquisition of any financial or personal
6 information submitted in connection with any claim for benefits pursuant to this
7 Settlement Agreement. In the event of any unauthorized access to or acquisition of
8 personal information concerning any Settlement Class Member as a direct result of
9 the intentional or negligent acts or omissions of the Claims Administrator, the Claims
10 Administrator shall be responsible for complying with any privacy, data security, or
11 breach notification obligations under state or federal law, and will be solely
12 responsible for directly providing notice to state agencies, affected Settlement Class
13 Members, and/or other persons or entities.

14 4.8 Taxes on Escrow Account. The Settlement Fund shall constitute a
15 qualified settlement fund within the meaning of Treasury Regulations Sections
16 1.468B-1 through 1.468B-5, 26 C.F.R. §§ 1.468B-1 through 1.468B-5 (1992). The
17 Settling Parties shall treat the Settlement Fund as a qualified settlement fund for all
18 reporting purposes under the federal tax laws. For the purpose of Section 468B of the
19 Internal Revenue Code of 1986, as amended, and the regulations promulgated
20 thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent shall
21 timely and properly file all informational and other tax returns necessary or advisable
22 with respect to the Settlement Fund (including, without limitation, the returns
23 described in Treas. Reg. Section 1.468B-2(k)). Such returns shall be consistent with
24 this Subsection and in all events shall reflect that all taxes (including any interest or
25 penalties) on the income earned by the Settlement Fund shall be paid out of the income
26 earned by the Settlement Fund. Taxes and tax expenses shall be treated as, and
27 considered to be, a cost of administration of the Settlement Fund and paid without
28 prior order from the Court. The Escrow Agent shall be obligated (notwithstanding

1 anything herein to the contrary) to withhold from the income earned by the Settlement
2 Fund any funds necessary to pay such taxes, including the establishment of adequate
3 reserves for any taxes and tax expenses (as well as any amounts that may be required
4 to be withheld under Treas. Reg. Section 1.468B-2(1)(2)). The Escrow Agent shall
5 maintain accurate records of all expenditures made pursuant to this Subsection, and
6 shall provide the records upon request to Plaintiffs' Counsel and Herbalife's counsel.
7 None of the Settling Parties, or any of their counsel, shall have any responsibility for
8 the payment of taxes described in this Subsection. The parties hereto agree to
9 cooperate with the Escrow Agent, each other, and their tax attorneys and accountants
10 to the extent reasonably necessary to carry out the provisions of this Subsection.

11 4.9 Discretion of Claims Administrator. The Claims Administrator, who
12 shall be approved by the Court, shall have discretion to make equitable decisions to
13 carry out the intent of the Settlement Agreement.

14 4.10 Continuing Jurisdiction Over Direct Relief. The Settlement Fund shall
15 be within the control and jurisdiction of the Court, *custodia legis*, until such time as
16 they are distributed pursuant to this Settlement Agreement.

17 **5. CORPORATE POLICIES**

18 5.1.1 All corporate policies set forth in this Section 5 shall be continued
19 for no less than three years from the date the Court issues final approval of the
20 Settlement Agreement or such earlier date as Herbalife shall elect to implement them.
21 These policies shall relate to all U.S. Herbalife distributors, regardless of whether they
22 are Settlement Class Members or opt out of the Settlement Class.

23 5.1.2 Herbalife shall amend its U.S. Rules of Conduct and Distributor
24 Policies to indicate that U.S. event attendance is not mandatory and does not guarantee
25 financial success.

26 5.1.3 Herbalife shall amend its U.S. Rules of Conduct and Distributor
27 Policies to indicate that representations made by distributors that U.S. event
28 attendance is mandatory or that it guarantees financial success are prohibited.

1 5.1.4 U.S. Herbalife Corporate Event flyers, and the portion of
2 Herbalife's website promoting U.S. STS events, shall include a disclaimer that U.S.
3 event attendance is not mandatory and does not guarantee financial success.

4 5.1.5 Herbalife shall amend its U.S. Rules of Conduct and Distributor
5 Policies to provide that ticket purchases for U.S. Herbalife Corporate Events shall be
6 refundable via the company's existing buyback procedure pursuant to its Gold
7 Standard Guarantee.

8 (a) Additionally, Herbalife shall also allow distributors to
9 cancel their U.S. Herbalife Corporate Event ticket
10 purchases within 24 hours of purchase.

11 5.1.6 Herbalife distributors shall be precluded from purchasing more
12 than two tickets per distributorship for any given U.S. Herbalife Corporate Event.

13 **6. ENTRY OF PRELIMINARY APPROVAL ORDER, NOTICE TO THE**
14 **SETTLEMENT CLASS, AND ENTRY OF FINAL JUDGMENT**

15 6.1 Motion for Preliminary Approval. Promptly upon execution of this
16 Settlement, the Settling Parties shall submit this Settlement Agreement together with
17 its exhibits and shall jointly apply to the Court for entry of the Preliminary Approval
18 Order, which includes provisions that, among other things, will:

19 6.1.1 Preliminarily approve the Settlement Agreement as being
20 reasonable and the product of good faith negotiations;

21 6.1.2 Certify for settlement purposes only the Settlement Class under
22 Rule 23 of the Federal Rules of Civil Procedure;

23 6.1.3 Approve the Claim Form substantially in the form attached as
24 Exhibit C, and approve A.B. Data as the Claims Administrator, or as otherwise
25 proposed by the parties or selected by the Court;

26 6.1.4 Approve the Notice substantially in the form attached as Exhibit
27 A and the Summary Notice substantially in the form attached as Exhibit B;

28 6.1.5 Order that the Summary Notice be disseminated in accordance

1 with the Preliminary Approval Order;

2 6.1.6 Provide that any person falling within the definition of the
3 Settlement Class who desires to be excluded from the Settlement Class must request
4 exclusion by submitting a timely and valid exclusion request, in compliance with the
5 instructions in the Notice of Proposed Settlement, to the Claims Administrator no later
6 than 120 days after the entry of preliminary approval of the Settlement Agreement;

7 6.1.7 Provide that persons falling within the definition of the Settlement
8 Class who do not file valid and timely requests for exclusion will be: (i) bound by the
9 Final Judgment dismissing the Action on the merits and with prejudice; and (ii)
10 permanently barred and enjoined from commencing, prosecuting, or participating in
11 the recovery in any direct or representative action, or any action in any other capacity,
12 asserting or relating to any of the Released Claims, in the manner described in Section
13 8;

14 6.1.8 Find that the notice to be given in accordance with the Preliminary
15 Approval Order (including the contents of the Notice and Summary Notice and the
16 proposed means for effecting notice to persons falling within the definition of the
17 Settlement Class) constitutes the best notice practicable under the circumstances and
18 constitutes valid, due, and sufficient notice to all members of the Settlement Class,
19 complying fully with the requirements of Rule 23 of the Federal Rules of Civil
20 Procedure, the Constitution of the United States, and any other applicable law;

21 6.1.9 Order that notice to persons falling within the definition of the
22 Settlement Class shall be structured to be as efficient as possible and to make
23 maximum use of notice by email and other electronic means and that such notice shall
24 be undertaken by the Claims Administrator;

25 6.1.10 Schedule a Settlement Hearing to consider and determine
26 whether the Settlement proposed under the terms of this Settlement Agreement should
27 be finally approved as fair, reasonable, and adequate, and whether the Final Judgment
28 approving the Settlement Agreement and resolving the Action should be entered, and

1 to consider the request for an award of attorney's fees and reimbursement of expenses;

2 6.1.11 Provide that the hearing on this Settlement Agreement and any
3 request for an award of attorneys' fees and reimbursement of expenses may, from
4 time to time and without further notice to the Settlement Class, be continued or
5 adjourned by order of the Court;

6 6.1.12 Provide that any Settlement Class Member seeking to object to
7 (i) the proposed Settlement, (ii) entry of Final Judgment, (iii) entry of an order
8 approving the Settlement Agreement, or (iv) any proposed award of attorneys' fees
9 and reimbursement of expenses to Plaintiffs' Counsel (an "Objector") shall, no later
10 than 120 days after entry of the Court's Preliminary Approval Order, file a written
11 objection with the Court stating the basis for the Objector's objection(s) and whether
12 the Objector intends to appear at the Settlement Hearing;

13 6.1.13 Provide that, on the Effective Date, all Settlement Class
14 Members, whether or not they file a Claim Form or sign a release, shall be barred
15 from asserting any Released Claims against any of the Released Parties, and each and
16 all Settlement Class Members shall conclusively be deemed to have released and
17 forever discharged any and all such Released Claims as against all of the Released
18 Parties, in the manner described in Section 8.

19 6.2 Cooperation. Herbalife shall cooperate in providing to the Claims
20 Administrator the names, email addresses, Herbalife Event attendance information,
21 last-known addresses of the Settlement Class Members, and all other contact
22 information reasonably necessary for the Claims Administrator to provide the notice
23 contemplated by Section 4.2.1 and this Section 6, to the extent Herbalife has such
24 information. Such information shall be provided to the Claims Administrator
25 pursuant to a confidentiality agreement.

26 6.3 Motion for Final Judgment. If, after the Settlement Hearing scheduled
27 by the Court in the Preliminary Approval Order, the Court approves the Settlement
28 Agreement, then counsel for the Settling Parties shall request that the Court enter

1 Final Judgment.

2 6.4 Dismissal of Florida Action. Within three (3) business days of the
3 Effective Date, the related Florida action stylized as *Lavigne, et al. v. Herbalife Ltd.,*
4 *et al.*, Case No. 1:17-cv-23429-MGC (S.D. Fla.) shall be dismissed with prejudice.

5 **7. NO ADMISSION OF FAULT, LIABILITY, OR WRONGDOING**

6 7.1 The Settlement is Not an Acknowledgement of Liability or Wrongdoing.
7 Herbalife enters into this Settlement Agreement without in any way acknowledging
8 any fault, liability, or wrongdoing of any kind. Herbalife continues to deny all of the
9 material allegations in the Complaint and First Amended Complaint and assert that
10 Plaintiffs' claims are without merit.

11 7.2 The Settlement Raises No Inference of Liability or Wrongdoing. Neither
12 this Settlement Agreement, nor any of the negotiations or proceedings connected with
13 it, nor any other action taken to carry out this Settlement Agreement by any of the
14 Settling Parties shall be construed as, or shall be used as, or shall raise any
15 presumption or inference of, an admission or concession by or against or respecting
16 Herbalife of the truth of any of the allegations in the Complaint or First Amended
17 Complaint, or of any liability, fault, or wrongdoing.

18 7.3 The Settlement is Not Evidence of Liability or Wrongdoing. Neither this
19 Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations
20 or proceedings connected with them shall be offered as evidence or received in
21 evidence in any pending or future civil, criminal, or administrative action or be used
22 to create any inference or presumption of liability or an admission of any kind by
23 Herbalife, except as may be necessary to enforce the terms of this Settlement
24 Agreement.

25 **8. RELEASE**

26 8.1 As of the Effective Date and in consideration of this Settlement
27 Agreement and the benefits extended to the Settlement Class, Herbalife Nutrition
28 Ltd., Herbalife International, Inc., and Herbalife International of America, Inc., and

1 each of their present and former, direct and indirect, subsidiaries, parents, affiliates,
2 unincorporated entities, divisions, groups, officers, directors, shareholders, partners,
3 partnerships, joint ventures, employees, agents, servants, assignees, successors,
4 insurers, indemnitees, attorneys, transferees, and/or representatives, as well as any
5 non-Settlement Class Members who spoke at, presented at, planned, or promoted any
6 Herbalife Event or sold tickets to any Herbalife Event during the Class Period
7 (collectively, the “Released Parties”) shall be released and forever discharged by (i)
8 the Named Plaintiffs, for themselves and as the representatives of each Settlement
9 Class Member; (ii) each Settlement Class Member on behalf of himself or herself or
10 itself; and (iii) their respective present and former, direct and indirect, subsidiaries,
11 parents, affiliates, unincorporated entities, divisions, groups, officers, directors,
12 shareholders, partners, partnerships, joint ventures, employees, agents, servants,
13 assignees, successors, insurers, indemnitees, attorneys, transferees, spouses, and/or
14 representatives (collectively, the “Releasing Parties”) from all claims, demands,
15 rights, liabilities, suits, or causes of action, known or unknown, that were or could
16 have been asserted in the Action that are based upon, arise out of, or relate to Herbalife
17 Events, whether organized by Herbalife or independent distributors (“Released
18 Claims”).

19 8.2 The Released Claims include any unknown claims that reasonably could
20 have arisen out of the same facts alleged in the Action that the Settlement Class
21 Members do not know or suspect to exist in their favor at the time of the release,
22 which, if known by them, might have affected their settlement with, and release of,
23 the Released Parties or might have affected their decision not to object to this
24 Settlement. With respect to the Released Claims only, the Settlement Class Members
25 stipulate and agree that, upon the Effective Date, the Settlement Class Members shall
26 be deemed to have, and by operation of the Final Judgment shall have, expressly
27 waived and relinquished, to the fullest extent permitted by law, the provisions, rights,
28 and benefits of Section 1542 of the California Civil Code, or any other similar

1 provision under federal or state law, which provides:

2 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
3 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
4 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
5 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR
6 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
7 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

8 8.3 The Settlement Class Members may hereafter discover facts in addition
9 to or different from those they now know or believe to be true with respect to the
10 subject matter of the Released Claims, but upon the Effective Date, shall be deemed
11 to have, and by operation of the Final Judgment shall have, fully, finally, and forever
12 settled and released any and all of the Released Claims, whether known or unknown,
13 suspected or unsuspected, contingent or non-contingent, which now exist, or
14 heretofore have existed, upon any theory of law or equity now existing or coming into
15 existence in the future, for damages, injunctive relief, rescission, disgorgement, or
16 restitution or any other right, remedy, or relief of every nature and description
17 whatsoever, whether based on federal, state, local, statutory, or common law or any
18 other law, rule, or regulation, including the law of any jurisdiction outside the United
19 States, that were brought or could have been brought in the complaints in this Action
20 without regard to the subsequent discovery or existence of such different or additional
21 facts.

22 8.4 Continuing Jurisdiction. Except for the enforcement of the Final
23 Judgment entered pursuant to this Settlement Agreement, the Releasing Parties shall
24 be barred from prosecuting any proceeding against any of the Released Parties with
25 respect to any Released Claim. The Court shall retain jurisdiction to enforce the Final
26 Judgment, releases, and bars to suits contemplated by this Settlement Agreement. It
27 is further agreed that the Settlement Agreement and the Final Judgment may be
28 pleaded as a complete defense to any proceeding subject to this Section.

29 **9. EXCLUSION (OPTING OUT) FROM THE SETTLEMENT CLASS**

30 9.1 Any Person falling within the definition of the Settlement Class who

1 does not wish to participate in the Net Settlement Fund and be bound by the dismissals
2 and releases provided for in this Settlement Agreement must request exclusion from
3 the Settlement Class. A request for exclusion must state: (1) the name, address, and
4 telephone number of the Person requesting exclusion, (2) the statement “I wish to
5 exclude myself from the Settlement Class and do not wish to participate in the
6 Settlement in *Lavigne, et al. v. Herbalife*, No. 2:18-cv-07480-JAK (MRWx)” or
7 substantially similar words to this effect that are clear and unambiguous, and (3)
8 signed by the individual personally and not by a lawyer or someone acting on that
9 person’s behalf. “Mass” or “class” opt outs made on behalf of multiple persons or
10 classes of persons will be deemed invalid. The exclusion request must be sent by mail
11 or email to the Claims Administrator and postmarked or emailed on or before the date
12 specified in the Preliminary Order. The Claims Administrator shall deliver copies of
13 any and all requests for exclusion to Plaintiffs’ Counsel and Herbalife’s counsel. The
14 Claims Administrator shall make such deliveries on a weekly basis and shall ensure
15 that the final such delivery is received by Plaintiffs’ Counsel and Herbalife’s counsel
16 at least thirty (30) days before the Settlement Hearing. Plaintiffs’ Counsel shall file
17 any and all such requests for exclusion with the Court at or before the Settlement
18 Hearing. All Persons who submit valid and timely requests for exclusion in the
19 manner set forth in this Section shall have no rights under this Settlement Agreement,
20 and shall not share in the distribution of the Net Settlement Fund. All Persons falling
21 within the definition of the Settlement Class who do not request exclusion in the
22 manner set forth in this Section shall be Settlement Class Members and shall be bound
23 by this Settlement Agreement and the Final Judgment. Any Person falling within the
24 definition of the Settlement Class who timely requests exclusion shall, upon approval
25 of the Court, be excluded from the Settlement Class certified pursuant to Fed. R. Civ.
26 Proc. 23(b)(3).

27 **10. ATTORNEYS’ FEES AND DISBURSEMENT OF EXPENSES**

28 10.1 Application for Attorneys’ Fees and Expenses. Plaintiffs’ Counsel may

1 apply to the Court at the Settlement Hearing for an award of attorneys' fees and
2 reimbursement of their expenses and costs from the Settlement Fund in an amount to
3 be determined by the Court as a percentage of the entire value of settlement, including
4 monetary and other relief (such as corporate reforms), as a common fund, in
5 accordance with Ninth Circuit Court of Appeals precedent and the pertinent law.
6 Plaintiffs' Counsel anticipates requesting an award of attorneys' fees. Plaintiffs'
7 Counsel will file a separate motion with the Court requesting an award of attorney
8 fees, costs to be reimbursed, and any enhancements from the Settlement Fund in an
9 amount consistent with Ninth Circuit precedent. Plaintiffs and Plaintiffs' Counsel
10 agree that they will not seek to collect any attorneys' fees, expenses, or costs from
11 any source other than the Settlement Fund. To the extent the Court may award fees to
12 counsel for any Settlement Class Member appearing before the Court in connection
13 with the approval or implementation of this Settlement Agreement, such fees shall be
14 payable solely from the Settlement Fund.

15 10.2 Payment of Attorneys' Fees and Expenses Award. The attorneys' fees,
16 expenses, and costs approved by the Court to be distributed to Plaintiffs' Counsel
17 shall be paid by the Escrow Agent to Plaintiffs' Counsel from the Settlement Fund
18 within five (5) business days after the Effective Date.

19 10.3 Named Plaintiffs' Compensation. The Court may award reasonable
20 incentive compensation to the Named Plaintiffs for their service in the case, which
21 shall come from the Settlement Fund. Any such Court-ordered compensation shall be
22 paid within (5) five business days after the Effective Date. The Released Parties shall
23 have no responsibility for, and no liability whatsoever with respect to, any incentive
24 compensation to any of the Named Plaintiffs, except as expressly provided in
25 Subsection 4.1.

26 10.4 No Effect On Settlement. Any orders or proceedings relating to the
27 application of Plaintiffs' Counsel for an award of attorneys' fees, costs, and expenses
28 shall not operate to terminate or cancel this Settlement Agreement and shall have no

1 effect on the finality of the Final Judgment to be entered pursuant to this Settlement
2 Agreement.

3 10.5 Released Parties Not Responsible for Payment of Award. The Released
4 Parties shall have no responsibility for, and no liability whatsoever with respect to,
5 any payment to Plaintiffs' Counsel from the Settlement Fund that may occur, except
6 as expressly provided in Subsection 4.1.

7 10.6 Released Parties Not Responsible for Allocation of Award. The
8 Released Parties shall have no responsibility for, and no liability whatsoever with
9 respect to, the allocation among Plaintiffs' Counsel, and any other Person who may
10 assert some claim thereto, of any award of attorneys' fees, costs, or expenses that the
11 Court may make.

12 **11. TERMINATION OF SETTLEMENT AGREEMENT**

13 11.1 Conditions Permitting Termination. Herbalife or Plaintiffs may elect to
14 terminate the Settlement Agreement, at their option, in the event that more than five
15 percent (5%) of members of the Settlement Class exclude themselves from the
16 Settlement pursuant to the provisions of Section 9.

17 11.2 Procedure for Termination. In order to terminate this Settlement
18 Agreement pursuant to Subsection 11.1, a party must serve a written notice of
19 termination on the Court and on opposing counsel, by hand delivery or by First-Class
20 Mail. Such written notice must be delivered or postmarked within ten (10) business
21 days after counsel for the party seeking termination of the Settlement Agreement
22 receives from the Claims Administrator the last weekly delivery of copies of requests
23 for exclusion as provided for in Section 9 or within ten (10) business days after the
24 Court grants any additional request for exclusion from the Settlement Class for any
25 reason.

26 11.3 Consequences of Termination. If the Effective Date does not occur or if
27 a party terminates this Settlement Agreement as provided in this Section 11, then this
28 Settlement Agreement shall have no further force or effect and the Settling Parties

1 shall revert to their respective positions as of the date that the Settlement Agreement
2 was executed by Plaintiffs and Herbalife as though this Settlement Agreement had
3 never been executed. In that event, within five (5) business days after written
4 notification of such event is sent by Herbalife's counsel or Plaintiffs' Counsel to the
5 Escrow Agent, the Settlement Fund, less expenses and any costs which have been
6 disbursed pursuant to Subsections 4.1 and/or 4.2, shall be refunded by the Escrow
7 Agent to Herbalife's counsel. In such event, Herbalife shall be entitled to any tax
8 refund owing to the Settlement Fund. At the request of Herbalife, the Escrow Agent
9 or its designee shall apply for any such refund and pay the proceeds, after deduction
10 of any fees or expenses incurred in connection with such application(s) for a refund,
11 to Herbalife.

12 11.4 Inadmissible for Purposes of Certifying a Litigation Class. If the
13 Settlement Agreement is terminated pursuant to the provisions set forth in this Section
14 11 or the Effective Date does not occur for any reason, the parties will not offer this
15 Settlement Agreement, any agreement negotiated between the parties in connection
16 with or regarding the Settlement or the Settlement Agreement, or any motion seeking
17 approval of the Settlement or Settlement Agreement in connection with a motion to
18 certify a litigation class or in any other proceeding in this Action.

19 **12. OTHER PROVISIONS OF THE SETTLEMENT**

20 12.1 Public Communications. The Settling Parties shall consult concerning
21 separate communications to the public with respect to the Settlement, and shall agree
22 that any other public communications regarding the Settlement will be consistent with
23 those communications. For a period of one year from the date the Court issues final
24 approval of the Settlement Agreement, counsel for the Settling Parties agree not to
25 disparage any Settling Parties on social media or in any statement that will be publicly
26 disseminated.

27 12.2 Stay of Proceedings. Upon the execution of this Settlement Agreement,
28 all discovery and other proceedings in the Action shall be stayed until further order

1 of the Court, except for proceedings that may be necessary to implement the
2 Settlement or comply with or effectuate the terms of this Settlement Agreement.

3 12.3 Restoration to Status Quo Upon Termination. In the event this
4 Settlement Agreement is not approved by the Court in its present form, or the
5 conditions required for the Settlement Agreement to be consummated do not occur,
6 then the Settling Parties hereto shall be restored to their respective positions as of the
7 date that the Settlement Agreement was executed by Plaintiffs and Herbalife, the
8 terms and provisions of the Settlement Agreement shall have no further force and
9 effect with respect to the Settling Parties, and to the extent permitted by law, the
10 Settlement Agreement and associated exhibits shall not be used in any action or
11 proceeding for any purpose, and any orders entered by the Court in accordance with
12 the terms of the Settlement Agreement shall be treated as vacated nunc pro tunc.

13 12.4 Best Efforts and Cooperation. The Settling Parties acknowledge that it
14 is their intent to consummate this Settlement Agreement. Accordingly, the Settling
15 Parties agree to cooperate to the extent necessary to effectuate and implement all
16 terms and conditions of the Settlement Agreement and exercise their best efforts to
17 establish the foregoing terms and conditions of the Settlement Agreement. The
18 Settling Parties further agree to cooperate in effecting notice to members of the
19 Settlement Class and in securing the Court's approval of the Settlement.

20 12.5 Authorization of Counsel. The undersigned counsel represent that they
21 are fully authorized to execute and enter into the terms and conditions of the
22 Settlement Agreement on behalf of their respective clients.

23 12.6 Entire Agreement. This Settlement Agreement (along with the exhibits
24 thereto) constitutes the entire agreement among the Settling Parties and supersedes
25 any prior agreements or understandings between them. All terms of this Settlement
26 Agreement are contractual and not mere recitals and shall be construed as if drafted
27 by all Settling Parties. The terms of this Settlement Agreement are and shall be
28 binding upon and inure to the benefit of each of the Settling Parties and Settlement

1 Class Members, their agents, attorneys, employees, heirs, successors, and assigns, and
2 upon all other persons claiming any interest in the subject matter hereto through any
3 of the parties hereto, including any Plaintiff or Settlement Class Member.

4 12.7 Amendment. This Settlement Agreement may be amended or modified
5 only by a written instrument signed by or on behalf of all parties hereto or their
6 successors in interest. Amendments and modifications may be made without notice
7 to the Settlement Class, unless notice is required by the Court.

8 12.8 Execution in Counterparts. This Settlement Agreement may be executed
9 in counterparts or by facsimile, with each counterpart or facsimile signature having
10 the same force and effect as an original. All executed counterparts and each of them
11 shall be deemed to be one and the same instrument. Counsel for the parties to this
12 Settlement Agreement shall exchange among themselves original signed counterparts
13 and a complete set of original executed counterparts shall be filed with the Court.

14 12.9 Jurisdiction. The Court shall have exclusive and continuing jurisdiction
15 over the implementation, interpretation, and execution of the Final Judgment and this
16 Settlement Agreement and all exhibits thereto, with respect to all parties hereto,
17 including all Settlement Class Members.

18 12.10 Governing Law. The rights and obligations of the parties to the
19 Settlement Agreement shall be construed and enforced in accordance with, and
20 governed by, the laws of the State of California.

21 12.11 Headings. The headings and subheadings to this Settlement Agreement
22 have been inserted for convenience only and are not to be considered when construing
23 the provisions of this Settlement Agreement.

24 12.12 Severability. In the event any one or more of the provisions contained
25 in this Settlement Agreement shall for any reason be held to be invalid, illegal, or
26 unenforceable in any respect, such invalidity, illegality, or unenforceability shall not
27 affect any other provision if the Settling Parties all elect to proceed as if such invalid,
28 illegal, or unenforceable provision had never been included in the Agreement.

1 IN WITNESS WHEREOF, each of the Parties hereto has caused the Agreement
2 to be executed on its behalf by its duly authorized counsel of record, all as of the day
3 set forth below.

4
5 ***Local Rule 5-4.3.4(a)(2)(i) Compliance:*** Filer attests that all other signatories
6 listed concur in the filing's content and have authorized this filing.

7 DATED: May 27, 2022

Mark Migdal & Hayden

8 By: /s/ Etan Mark

9 Etan Mark

10 Attorneys for Plaintiffs Patricia Rodgers,
11 Jennifer Ribalta, and Izaar Valdez

12 DATED: May 27, 2022

Mark T. Drooks

13 Paul S. Chan

14 Gopi K. Panchapakesan

Jonathan M. Jackson

15 Bird, Marella, Boxer, Wolpert, Nessim,
16 Drooks, Lincenberg & Rhow, P.C.

17
18 By: /s/ Paul S. Chan

19 Paul S. Chan

20 Attorneys for Defendant Herbalife
21 International of America, Inc.
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